

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 27149 of 2003

Between:

K. Kondaiah, S/o. E.C. Venkata Swamy,
A.P. Social Welfare Residential School/ Jr. College, Kasa Gardens,
Srikalahasthi, Chittoor District.

..... PETITIONER

AND

- 1 The Secretary, A.P. Social Welfare Residential Educational Institutions Society, Masab Tank, Hyderabad.
- 2 The Principal, A.P. Social Welfare Residential School/Jr. College, Kasa Gardens, Srikalahasthi, Chittoor District.
- 3 The Principal Secretary, Govt. of A.P., Department of Social Welfare, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly one in the nature of writ of mandamus declaring the impugned order, Rc.No. Z-IV/0958/98, dt.18-12-2003 of the 1st respondent awarding punishment of reversion to a lower cadre as post Graduate Teacher (Physical Science) and posting at APSWR School, Allagadda, Kurnool District, as illegal, arbitrary and unjust, violative of principles of natural justice and consequently direct the respondents to reinstate the petitioner in to the same post of Jr. Lecturer, (Phy. science) at the same place at Srikalahasthi with all consequential benefits.

Counsel for the Petitioner: MR.A.CHANDRAIAH NAIDU

Counsel for the Respondent No.1 & 2: MR.MOOLA VIJAYA BHASKAR (SC for APSWREI)

Counsel for the Respondent No.3: GP FOR SOCIAL WELFARE

The Court made the following :

ORDER:

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Challenging the order dated 18-12-2003 of the first respondent awarding punishment of reversion to the petitioner to the lower cadre as Post Graduate Teacher (physical science) and posting at APSWR School, Allagadda, Kurnool District, the present writ petition is filed.

2. The brief facts that are necessary for disposal of the present writ petition are as follows:

Petitioner states that he has been working as Junior Lecturer (Physics) in the respondent institute to the utmost satisfaction of his superiors. While so, on 04-08-2003, the first respondent by letter Rc.No.Z-IV/0958/98 placed him under suspension on the complaint of the second respondent that petitioner was not paying concentration on teaching and learning interaction, which resulted in academic disturbance and that he was arrogant and showing insubordination towards the second respondent. First respondent issued a charge memo Rc.No.Z-IV/0958/98 dated 08-09-2003 framing four charges, ordered enquiry and called for written statement of defence. Petitioner filed his explanation on 18-09-2003 denying the charges as false and baseless. But, first respondent ordered for enquiry and Enquiry Officer submitted enquiry report after completion of one-sided enquiry. The first respondent issued a show-cause notice Rc.No.Z-IV/0958/98 dated 20-11-2003 pursuant to enquiry report with a covering letter dated 01-12-2003 and petitioner submitted his reply dated 08-12-2003 requesting for exonerating him from the charges. But, first respondent issued punishment order Rc.No.Z-IV/0958/98, dated 18-12-2003 awarding punishment of reversion to a lower cadre as Post Graduate Teacher (Phy. Science) and posted to APSWR School, Allagadda, Kurnool District. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel for the petitioner vehemently contended that enquiry was not

conducted in accordance with the rules; list of documents and list of witnesses relied upon by the Department have not been furnished to the petitioner and that the statements of witnesses were recorded behind back to the writ petitioner and the petitioner was not given an opportunity to cross-examine the witnesses and therefore the manner of conducting the enquiry is totally opposed to the principles of natural justice and the petitioner has lost his valuable right of cross-examining the witnesses. Therefore, prays to set aside the impugned order dated 18-12-2003.

4 . A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner.

5 . The learned standing counsel for APSWREI appearing on behalf of the respondents 1 and 2, vehemently contended that enquiry was conducted in accordance with rules and reasonable opportunity was given to the writ petitioner to cross-examine the witnesses and statements of witnesses have been recorded in the presence of the writ petitioner and therefore the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court.

6. A reply affidavit has been filed by the petitioner again reiterating the same stand taken in the affidavit filed in support of the writ petition.

7. The procedure to be followed in conducting the regular departmental enquiry is governed by service rules. A perusal of the enquiry report and original file shows that Enquiry Officer submitted the report to the disciplinary authority stating that she conducted a detailed enquiry into the charges on 18-10-2003 in the presence of Charged Officer. Some staff members viz., Smt.M.Muniraja, G.Govindababu, Smt.P.Rajani Kumari, Smt.P.Rajeswari, S.Murugesh, Nagaiah, and Smt.P.Vasanth Kumari were enquired into the charges leveled against the writ petitioner and those staff members have deposited and submitted written statements. Basing on those statements, Enquiry Officer came to the conclusion that the charges leveled against the writ petitioner are proved. But, it is nowhere in the enquiry report that the writ petitioner was given an opportunity to cross-examine those witnesses with reference to their statements.

8. As rightly contended by the learned counsel for the petitioner, petitioner was not given any opportunity to cross-examine the witnesses, whose statements were recorded by the Enquiry Officer. But as seen from the original statements of those witnesses they cannot be statements of witnesses, but they are only submissions of

written statements addressed to the Enquiry Officer. There cannot be any dispute that right of cross-examination to the delinquent is a valuable right, which cannot be denied. If it is denied, it will go to the root of the case and thereby one of the salutary principles of natural justice would be violated. The file does not indicate that the petitioner was given an opportunity to cross-examine the said staff members. The enquiry report also does not indicate that those statements were recorded by the Enquiry Officer in the presence of the delinquent. At best it would go to show that some of the staff members gave statements but not in the presence of delinquent. Solely basing on those statements Enquiry Officer gave a finding that the charges leveled against the petitioner are proved.

9. Since the petitioner was not given any opportunity to cross-examine the staff members, who gave the statements before the Enquiry Officer, the valuable right of the petitioner has been lost and therefore the enquiry proceedings have to be declared as illegal. Basing on the enquiry report the impugned proceedings are passed, they are liable to be set aside. Therefore, the matter is remitted to the Enquiry Officer to conduct a fresh enquiry in accordance with rules within a period of three months from the date of receipt of a copy of this order and thereafter the disciplinary authority shall take appropriate decision. It is further directed that the petitioner shall co-operate with the enquiry without taking any unnecessary adjournments. It is also made clear that before commencing the enquiry the respondents shall furnish copies of the statements of the witnesses and the documents, which they want to rely on in the departmental proceedings.

10. With the above observations, the writ petition is disposed of. No order as to costs.

K.C.BHANU, J.

Dated 12-07-2005.

SKMR

..... REGISTRAR

Copy to:

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- 1 The Secretary, A.P. Social Welfare Residential Educational Institutions Society, Masab Tank, Hyderabad.
 - 2 The Principal, A.P. Social Welfare Residential School/Jr. College, Kasa Gardens, Srikalahasthi, Chittoor District.
 - 3 The Principal Secretary, Govt. of A.P., Department of Social Welfare, Hyderabad.
- 4 2 CCs to G.P. for Social Welfare, High Court Buildings, Hyderabad (OUT).

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